

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ROBERT BELOTA

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**C.A. No. T14-0021
13001537122**

DECISION

PER CURIAM: Before this Panel on August 6, 2014—Administrative Magistrate Cruise (Chair, presiding), Judge Parker, and Magistrate Abbate, sitting—is Robert Belota’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the charged violations of G.L. 1956 § 31-24-23, “Use of multiple beam lamps.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On November 5, 2013, a Rhode Island State Trooper charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charges, and the matter was set down for arraignment on January 8, 2014. At arraignment, the defendant pled not guilty and the matter was set down for trial on February 5, 2014. Due to inclement weather on February 5, 2014, Appellant’s trial date was rescheduled for March 5, 2014. Appellant was notified of the new court date via mail.

However, Appellant failed to appear for his scheduled trial on March 5, 2014, and the Court entered a default judgment against him. Following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of

Procedure (Rule 20). After a hearing on April 7, 2014, his Motion to Vacate was denied. It is from the denial of his motion that Appellant now appeals to this Panel.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in

which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that his absence from his trial date should be excused. Specifically, Appellant maintains that he missed his court date because he had work and would have been fired if he came to court.

Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for . . . excusable neglect.” Traffic Trib. R.P. 20. “It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the discretion of the trial justice before whom the motion is brought. Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that discretion.” Phoenix Constr. Co., Inc. v. Hanson, 491 A.2d 330, 331 (R.I. 1985) (citing Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co., 477 A.2d 934, 937 (R.I. 1985)). The burden is squarely on Appellant to show that his “failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident. . . .” Pleasant Management, LLC v. Carrasco, 960 A.2d 216 (quoting Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 584 (R.I. 2005)). Moreover, the Rhode Island Supreme Court has held that choosing to go to work is “insufficient to warrant the vacating of a default judgment.” In re Markese T., 701 A.2d 1028, 1029 (R.I. 1997) (upholding

a decision from Family Court to deny a motion to vacate default judgment when Appellant's only argument was that he had to go to work).

The record reflects that Appellant did not follow the "course of conduct which a reasonably prudent person would take under similar circumstances." Id. (quoting Pari v. Pari, 558 A.2d 632, 635 (R.I. 1989)). Accordingly, this Panel is satisfied that it was not an abuse of the hearing judge's discretion, having taken "account of all relevant circumstances surrounding [Appellant's] omission[]," Id. (quoting Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 389 (1993)), to deny his Rule 20 motion.

The Appellant was fully informed of the dates he needed to appear before the Court and has not produced evidence sufficient to merit excusing his absence. See In re Markese T., 701 A.2d at 1029 (failing to appear at court because of work is insufficient evidence to vacate a default judgment). The Supreme Court has held that "to establish excusable neglect, the party generally must show that the circumstances that caused the party to miss a deadline were out of that party or counsel's control." Rivera v. Rose, 14 A.3d 939, 945 (R.I. 2011) (quoting Boranian v. Richer, 983 A.2d 834, 840 (R.I. 2009)).

After a review of the record and the oral arguments presented to this Court, this Panel finds that the decision of the hearing judge was supported by the reliable, probative, and substantial evidence of record. The hearing judge did not abuse his discretion when he sustained the instant violation.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the motion hearing judge's decision was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

Associate Judge Edward C. Parker

Magistrate Joseph A. Abbate

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.